

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**Regular Second Appeal No.1788 of 2012 (O&M)
Date of Decision: February 22, 2019.**

Rachhpal Singh and others

.....APPELLANT(s).

VERSUS

Baldev Singh and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Ms. Satpreet Grewal Advocate for
Mr. Rajeev K. Kapila, Advocate
for the appellant (s).

Mr. B.S. Jaswal, Advocate
for the respondent No.1.

SURINDER GUPTA, J.

This is appeal against the concurrent judgments of the Courts below whereby suit filed by Baldev Singh, respondent-plaintiff for exclusive possession of 1/3rd share by way of partition of the house in khasra No.346 (12 marlas) situated in revenue estate of village Premgarh (now Hari Nagar), Hoshiarpur and electric motor fitted on the hand-pump, was decreed.

The case of plaintiff, in brief, is that he along with his brother Ran Singh and Hakam Singh are owners in possession of the suit property along with tractor bearing registration No.PBH-7821. Property bearing No.346 was purchased in the name of plaintiff and his brothers in equal shares. Thereafter, the house was constructed in the year 1986-87. Plaintiff spent a sum of ₹33,000/- over the construction and is in possession of Miani shown as 'Y' on the middle floor and room marked as 'X' along with kitchen,

verandah, stairs, latrine, bathroom and common yard. As the relations of the parties are not cordial, he sought separation of his share by way of partition.

Ran Singh (since deceased) contested the claim of the plaintiff with the plea that plaintiff has no share in the tractor, electric motor or the house in question. Suit property was a plot and had fallen to the share of Ran Singh in family settlement in the year 1995 and thereafter, he spent about ₹2 lakhs on the construction of the house over it. He alleged his exclusive possession over the disputed house. It was alleged that the property situated in village Bahera, which fell in share of Barinder, Narinder and Sikander sons of Hakam Singh was newly constructed house and another house situated at village Bahera, came to the share of Ran Singh and his sons. As the house which fell to the share of plaintiff was a new one, property No.289 of Bahera was given to Sardeep Singh, defendant No.1(iv), who installed '*Atta Chakki*' there. Bajaj Chetak Scooter bearing registration No.PB-07-0231 and tractor Escort bearing registration No.PAO-1060 were given to the plaintiff along with one Thresher and a water pump engine of 6.5 HP. Another tractor bearing registration No.PBH-7821 model 1985 was given to defendant No.2 and the land of Mohalla Premgarh was given to defendant No.1. Defendants No.2 to 6 also contested the suit of the plaintiff and his 1/3rd share in the suit property.

Learned Additional Civil Judge (Senior Division), Hoshiarpur relied on the statement of Surinder Singh son of Hakam Singh, defendant who appeared as DW8 and observed as follows:-

“35. DW8 Surinder Singh tendered his affidavit
Ex.DW8/A wherein he has mentioned that construction

of the house in dispute was jointly raised by him. The house in dispute is in joint possession of the parties. Plaintiff is not in exclusive possession of the house in dispute. Defendants No.2 to 6 have 1/3rd share in the house in dispute. In the cross examination he has testified that family partition was effected in the year 1995 and house was constructed after 1995 again said before 1995. He has testified that no writing was effected with regard to the alleged partition allegedly effected in the year 1995. He has further testified that in the year 1995, the house in dispute was kept joint. He has further testified that there are verandah, kitchen, latrine, bath room and stairs case and court yard which are joint between the parties. Thus testimony of this witness also proved the version of the plaintiff that the property situated at Mohalla Hari Nagar, is joint between the parties.”

The suit property along with electric motor fitted on the hand pump was held as joint of the parties and claim of plaintiff-respondent No.1 that he is entitled to his 1/3rd share in above property by way of partition, was allowed.

Not satisfied, legal heirs of Ran Singh filed appeal, which was dismissed by Additional District Judge, Hoshiarpur with the observations in para 33 of the judgment as follows:-

“33. After going through the oral as well as documentary evidence on record, examination in chief and cross examination of all the witnesses and sale deed Ex.PW5/1A, it is clear that property in dispute was purchased in the name of three persons Ran Singh, Hakam Singh and Baldev Singh and this sale deed is proved by the witnesses on the file. There is clear cut admission of DW8 Surinder Singh that the property of

house in dispute was not partitioned when alleged family partition took place in 1995. It is also proved on the file that agriculture land bearing Khasra No.289, 453, 454 was partitioned by Tehsildar cum Assistant Collector but there is no reference to the family partition of the property of Kh. No.346. It is also not proved that in the year 1995 in which defendants are alleging family partition suit property was also partitioned between parties. So keeping in consideration sale deed in question and admission of witnesses, it is clear that property in Kh. No.346 is joint between plaintiff and defendant No.1 of 1/3 share each and construction was raised in 1987-88. Regarding tractor No.PBH-7821 it is clear that tractor is in the name of Surinder Singh and Sardeep Singh. There is no evidence on the file which can show that tractor was also joint of the parties. Regarding electric pump in dispute, PW7 has mentioned that there was joint electric pump motor fitted in the hand pump. DW8 Surinder Singh has stated that electric motor was purchased from joint funds but in the partition in 1995 it fell to share of Surinder Singh. So it is clear that electric motor also joint by the parties as 1/3rd share each. As such finding of learned lower court on issue No.1 are upheld.”

Learned counsel for the appellant(s) has argued that the suit filed by plaintiff-respondent No.1 was bad for seeking partial partition and from the judgment in the earlier suits filed by him, his wife and son, it is proved that the joint property between the parties had already been partitioned. He had earlier filed suit seeking rendition of account of '*Atta Chakki*' being run in property bearing khasra No.289 situated in village Bahera, which was dismissed with the observation that in the family partition in the year 1995, the same had fallen to the share of son of Ran

Singh. The suit filed by Leela Devi wife of Baldev Singh and his son Virender Singh seeking exclusive possession in the property bearing khasra No.289, 453 and 454 was also dismissed with the observations that after the year of partition i.e. 1995, the parties to the suit were living separately. They are having their separate possession and the suit property in that case was not joint. She has argued that once it is proved that there was family settlement between the parties, the plaintiff could not claim the suit property to be joint.

Learned counsel for respondent No.1 has argued that the earlier suits filed by plaintiff, his wife and sons were regarding the property inherited by them from Daya Ram father of Baldev Singh (plaintiff), Ran Singh and Hakam Singh.

The suit property was admittedly purchased in the name of three brothers namely Baldev Singh, Ran Singh and Hakam Singh. No evidence has come on record regarding the terms of the family partition that took place in the year 1995. The plea of the defendant that he raised the construction of the house over the suit property was demolished by his own witness DW3 Jasbir Singh, who stated that construction over the house in question was raised in the year 1987-88 and not after 1995 as alleged by the defendant. Rachhpal Singh son of Ran Singh DW4 has also admitted this fact. This substantiates the plea of plaintiff that he contributed while raising construction of disputed house in the year 1987-88. Surinder Singh, defendant while appearing as DW8, has also admitted that suit property was joint in which they had 1/3rd share with the plaintiff. He had specifically stated that house in question was kept joint in the family partition in the year 1995.

The defendants are alleging family partition in the year 1995 regarding the joint property of the parties. That family partition was not reduced into writing. No evidence has come on record that appellants have pleaded in the earlier litigation the terms of family partition. This fact is not disputed that the suit property was purchased in the name of plaintiff and his two brothers namely Ran Singh and Hakam Singh, while the other suits were related to the property which devolved on plaintiff and his brothers/sisters after the death of Daya Ram. This suit, as such, is not for seeking partial partition or is hit by the finding in the earlier suit, where Baldev Singh, his wife and son failed to prove their share in the property left by Daya Ram.

Learned counsel for the appellant has not been able to point out any material discrepancy in the finding of fact as recorded by the Courts below or the evidence which has not been looked into while recording the finding that the suit property is joint of the parties and plaintiff is entitled to separate possession of his share by way of partition.

On perusal of the record and judgments of the Courts below, I find no legal or factual infirmity therein calling for any interference.

No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

(SURINDER GUPTA)
JUDGE

February 22, 2019.
Sachin M.

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***